

1885-031
Lee Co.

Chancery Causes: H. S. K. Morrison vs. John C. Olinger

Ayers, Hagen, Hyatt

M.C. 1885

CA-Contract Dispute

T-Property

To the Hon. John A. Kelly Judge of the
Circuit Court of Lee County Va.

Your orator H. S. K. Morison, humbly
complaining, respectfully represents, that
he is and was on the 31st day of March
1881 a practicing attorney in this Hon. Court
and that day one John C. Olinger, em-
ployed your orator's professional services to
negotiate and carry out for the said Olinger
a sale of an interest in a large tract of
mountain & mineral land, being $\frac{2}{3}$ of a
21000 acre survey situated in Wise County
Virginia. This sale was to be made by
your orator at a price of not less than
50 cents per acre, and was to be so per-
fected as to operate upon and effect the
setting aside of a sale theretofore made
under a decree of this Hon. Court of certain
lands so sold to C. Slump & C. L. Hamblin
situated in Lee County belonging to said
Olinger and which had been so sold by
a Commissioner in the Chancery Cause of
"Wood Murshie against said Olinger and other
Causes heard therewith; and the proceeds of
the lands to be sold by your orator
was to be applied to the judgments & debts
in the said Chancery Cause, so far as
they would liquidate the same, but if

Your orator affected such sale or sales as aforesaid within 60 days from the 31st March 1881. The said Olinger was to pay your orator 10. per centum on such gross sales as he should make. And said Olinger gave your orator a lien upon all his lands in Wise or Lee Counties to secure his compensation aforesaid. The matters and things herein referred to are specifically set forth and plainly mentioned in a written agreement by deed bearing date the 31st day of March 1881 herewith filed marked "A"

This deed has been duly recorded in the clerk's office of Lee County, and now is a lien as your orator is advised upon certain lands owned by said Olinger in said Lee County hereinafter referred to.

Your orator alleges that under and by virtue of said written contract-power and agreement, he did within the 60 days next after the date of said deed, Contract and sell said Wise County lands to one Patrick Hagan at the price of 60 cents per acre, that said Hagan agreed to purchase the same at that price and apply the proceeds thereof to the judgment aforesaid, and that said

Hayden was ready and abundantly able to do so; But this fact being known caused others to seek said lands, and Competition sprang up, and the said Olinger refused to ratify said sale but of his own accord employed others, and finally sold said lands to R. A. Ayers agent and attorney for one E. Hineman and the Insurance Co. & Col Company, and that the proceeds of this latter sale are being applied to the judgment aforesaid. At the time of the purchase aforesaid by said Ayers the rights of your creditor were mentioned & reserved and the said Ayers stipulated that said sale was in no wise to affect your creditor's Compensation, for it was well known to all concerned and your creditor alleges it as a fact that his efforts and Contract with Hayden led to and was the main cause of the sale to Ayers - The proceeds of this sale thus super-included by the agency professional management and advice has been applied to the judgment as reported to the Court of Wood. Marsh & Co and the defendant enjoying the full benefit of your creditor's labors & professional services - So that your

erator upon his promise did and performed each every thing undertaken by him, so far as undertaken except he was prevented by said Olinger to fully consummate his bargain - Your orator is therefore advised that he is fully entitled to 10 percent on the gross sales made to Ayers agent &c and that the same was made for the gross price of ^{\$9000} \$5000.00 and that the sum of \$500. and legal interest on the same from 31st March 1882,

The said Olinger owns a valuable real estate in Lee County whereon he now resides on Powell's River near the mouth of Thompson Creek or Olinger's Saw-Mill branch, the rents and profits of which will not in five years pay your orator's demand. He is advised that his said Contract is a lien upon these lands and liable to the payment thereof.

The object of this bill therefore is to have a decree for the amount found due him, and that said lien be enforced against said lands and that the same be sold or so much thereof as may be necessary to pay the same.

The premises Considered Your Orator
prays that said John C. Olinger be
made a party defendant to this
bill and answer its allegations on
oath, and upon a hearing a decree
be rendered, ~~for~~ the amount due Your
Orator against said Olinger; that the
lien therefor be enforced against said
lands; and the same or so much thereof
as may be found necessary be sold to
satisfy the same - Or if in anywise
mistaken in this then, that Your Orator
be granted such after further and general
relief as his case may merit or
he in any wise be found entitled to
and for all after further or general relief.
May supra issue &c.

A. L. Pridemore
for Plff.

IP

H. S. K. Morrison

68674
 at 15.00
 Comm. 5.00
 8 2.00
 Estimate 4.04

vs Bill Chip

734.68
 Due
 Col. 4.04

John C. Olinger
Exhibit A" filed

1883. April 25th Bill Filed.
 " May Spa not Ex'd alias
 Spa awarded
 " June alias Spa Ex'd & D. N.
 " July D. N. conf'd & cause
 set for hearing.
 Aug. 6 hour cont'd.
 1884. Mr. Olinger Aug Decret
 continued leave
 " Nov. continued
 1885. Decree & Cont'd.
 " Aug 10 hour cont'd

To the Hon. John A. Kelly, Judge
of the Circuit Court of Lee Co., Va.

The demurrer and answer of John
C. Clinger, to a bill filed against
him in this Honorable Court, by H. S. K.
Morison.

This respondent says that the
Plaintiff's bill is not sufficient in
law, to call upon him to answer
in this Honorable Court; but that
there is good cause of demurrer
there-to and he demurs accordingly,
and prays judgement of his said
demurrer &c,

And not waiving his
said demurrer but relying and in-
sisting there-on, should other and
further answer be required of
him, he answers and says:
That true it is the complainant
H. S. K. Morison was on the 31st of
March 1881 a practicing attorney in
this Hon. Court as is in the bill
alleged; that at that time ~~gave~~
respondent did employ ~~the~~ com-
plainant to sell certain mountain
and mineral lands situated in
Wise Co. Va., upon the terms stated

in the bill and plainly set forth
in a written agreement filed there-
with.

But it is not true, as the complainant
in his bill alleges, that he ever per-
fected a sale, according to ^{the} agreement,
to one Patrick Hagan at the price of
60¢ per acre or any other price— nor
was the failure to make such sale
to said Hagan caused by the inter-
ference of your respondent, as the
complainant in his bill avers; but
on the other hand your respondent alleges
that he was ^{always} willing and anxious
for the complainant to close the
trade with said Hagan, but the
said Hagan of his own accord
refused to accept the terms of
such sale.

True it is said Patrick Hagan
was and is abundantly able to
purchase the whole of $\frac{2}{7}$ of the
21000 acre survey, which, said
Morison had bound himself to
sell and all of which he was
compelled by the terms of the
agreement to sell so as to effect
the setting aside of a sale of certain

other lands, owned by your respondent situated in Lee Co. Va. and sufficiently described in the bill and the agreement filed therewith, before he could demand any compensation whatever from your respondent. But ~~your~~ respondent denies that said Hagan was at any time ready to purchase said land. On the other hand your respondent avers that in a conversation which occurred between him and said Hagan, the latter agreed to take only so much of $\frac{2}{7}$ of the 21000 acres as was not in the adverse possession of other parties and would take that much only upon the terms that your respondent would agree to horizontal measurement, which he declined to do, and insisted upon surface measure which is the one usually, if not universally applied to mountain lands. Your respondent also denies that the ^{alleged} efforts of the complainant to sell the said lands to one Patrick Hargan was the cause or in any way connected with the sale made to R. A. Ayers, Sgt. and attorney for E. K. Hineman and the Lin-

salix Iron and coal company.

Your respondent is therefore advised that, as the complainant totally failed to sell the said lands, as as to effect the setting aside of the sale of your respondent's ~~Lee Co.~~ lands, made under a decree of this Hon. Court & mentioned in the bill, ~~said~~ written agreement does not operate as a lien upon said ~~Lee Co.~~ lands as the complainant in his bill avers. But should the Court be of a different opinion, your respondent is advised that said agreement operates as a lien upon the Wise Co. lands also; for the said R. A. Ayers agt. had full knowledge, at the time ~~that~~ he purchased said Wise Co. lands, of the agreement between said Morrison and your respondent.

Your respondent says it is untrue that the rents & profits of ^{the} valuable real estate owned by him, situated in this County, and referred to in the bill, will not within five years pay the amount demanded by the complainant.

And having fully answered, the said

Respondent prays to be hence dismissed
with his reasonable costs in this behalf
expended, and he will ever pray, &c.
J. B. Fulkerson. p. d.

Sworn to before me in due
form by J. L. Olinger Aug.
27 1884 J. A. G. Hyatt c. c.

John C. Clinger
ads } Business

H. S. K. Morrison

Filed in open court
by leave thereof Arizona

27/882

J. A. Hyatt C.C.

To the Hon. Jno. A. Kelly, Judge
of the Circuit Court of Lee Co.,
Va.

The demurrer and answer of
John C. Clinger to a Bill filed
against him in this Honorable
Court, by H. S. K. Morrison.

This respondent says that the
Plaintiff's Bill is ^{not} sufficient in
law to call upon him to answer
in this Honorable Court but
that there is good cause of
demurrer there-to and he
demurs accordingly, and prays
judgement of said demurrer
+c.

And not waiving his said
demurrer but relying & trusting
there-on, should other and fur-
ther answer be required ~~for~~
of him he answers and
says:

That true it is the complainant
H. S. K. Morrison was on the 31st
of March 1881 a practicing attorney
in this Hon. Court as is in the
bill alleged; that at that time
your respondent did employ the
complainant to sell certain moun-

Tain and mineral lands
situated in Wise Co. Va., upon
the terms stated in the bill and
plainly set forth in a written
agreement filed therewith.

~~This respondent says that the
Deft's bill~~

But it is not true as the
complainant in his bill
alleges, that he ever perfected
a sale according to agreement,
to one Patrick Hagan at the
price of 60^{cts.} per acre or any other
price — nor was the failure ^{to effect} such
sale to said Hagan caused by
the interference of your respond-
ent as the complaint avers;
but on the other hand your
respondent alleges that he was
always willing and anxious
for the complainant to close
the trade with said Hagan,
but the said Hagan of his
own accord refused to
accept the terms thereof.
True it is, said Hagan was
and is abundantly able to
purchase the whole of $\frac{3}{4}$ of
the 21000 acre survey, which
said Morrison had bound
himself to sell and all of

which he was ~~bound~~ obliged
by the terms of the agreement
to sell so as to effect the
setting aside of a sale of
certain other lands, owned
by your respondent, situated
in Dec. Co. Va. and sufficiently
described in the bill & the agree-
ment filed therewith; Before
he could demand any other
compensation from your respond-
ent than that which he had already
rendered ^{to the complainant for his services} and ^{which} will be plainly ~~set~~
shown in the sequel. But
your respondent denies that
said Hagan was at any time
ready to purchase said
land. On the other hand,
your respondent avers
that in a conversation which
occurred between him & said
Hagan, the latter agreed to
take only so much of $\frac{2}{7}$ of
the 21000 acres as was not
in the adverse possession
of other parties, & would take
that much only upon the
terms that your respondent
would agree to horizontal
measurement which he re-
fused to do, and insisted
upon surface measure, which

which is the one usually - if
not universally, applied to moun-
tain lands, Your respondent
also denies that the alleged ef-
forts of the complainant to sell
the said lands ~~was~~ to Patrick
Hagan, was the cause ~~that~~
or in any way connected with
the sale made to R. A. Ayers,
Sgt. and Atty. for E. K. Kinnerman
and the Tinsalick Iron and coal
company. Your respondent is
therefore, that, ~~as the~~ as the com-
plainant totally failed to sell
the said lands ~~as to~~ ^{as to} accom-
plish the setting aside, ^{the sale} of your
respondent's See Co. lands, made
under a decree of this Hon.
Court & mentioned in the
Bill, said agreement does
does not operate as a lien
upon said See Co. lands or
The complainant in his Bill
avere. Your respondent
avere that the time H. B. K.
Morrison, the complainant
undertook to sell the lands
and at the time the instru-

advised

ment exhibiting the contract
filed here with marked "A" was
entered into; that he executed
his note, under seal, for \$5000
to Morrison & Duncan, partners
in law, which amt. was to
be, as agreed between H.S.
K. Morrison & your respondent,
said Morrison's compensation,
for services rendered in the
attempt to effect the sale
of fore-said, provided he should
fail to do so. Your respondent
averts that said note has long
~~has long~~ since been paid by
him & that the receipts filed
here with & asked to be considered
a part here-of, marked "E" & "F"
are the constables receipts
for the money received on the
fore-said notes including
interest & costs. Your respondent
says that it is untrue that the
rents & profits of the valuable
real-estate owned by him &
situated in this county,
referred to in the bill, will
not within five years pay the
amount demanded by the ~~same~~

complainant,

And having fully answered
the said respondent's prayer
to be hence dismissed with
his reasonable ^{costs} in this behalf ex-
pended & he will ever pray &c
J. B. Fulkerson
J. C.

John C. Winger
ado. } Amended Answer
H. D. K. Morrison

H. S. K. Morison Compt. vs. J. C. A. Clinger Deft. In Ch.

This cause came on to be heard on bill, answer, ^{and deposition of witnesses} ~~and~~ ^{for reading in writing} ~~and~~ ^{it} replication to answer, and was argued by Counsel. On consideration whereof it is adjudged, ordered and decreed that Complainant recover of defendant the sum of \$300.00 with interest thereon from the 31st day of March 1882 till paid and the costs of this suit. And should he not pay the same in 60 days then A. L. Prudhomme, who is hereby appointed a special Commissioner for the purpose shall rent the free County land of defendant for the shortest period that will pay it.

~~Before renting~~ He will advertise the time terms & place of renting by advertisement posted at the front door of the Court house on a Court day and at one or more public places in the neighborhood of the land to be rented 30 days before renting. The renting shall be for cash sufficient to pay costs & commissions, and the residue in equal annual payments. It shall be made on some Court day in front of the Court house to the highest bidder. Bonds with good security shall be taken. The term shall commence on the day of 18 ..

The Commissioner shall report to Court & The Cause is continued

Mich Lerou 1885-

Entered AD.

Page 447

J. R. Gibson Dk.

(?)

Enter

Jr. A.K.

Mar 30/85

H. S. K. Morison }
Ch. 3 } In Chancery,
John C. Clinger }

ON motion of the defendant leave was given him to file his demurrer and answer and it is accordingly filed and the plaintiff replied generally to said answer. Thereupon, on motion of the defendant who filed exceptions to the depositions of P. Hagan & R. A. Ayers in this cause the said exceptions are so far sustained as to allow the defendant to cross-examine said witnesses. He will give the plaintiff notice of the time & place of such cross-examination, and this cause is continued till next term.

H. S. K. Morrison

vs. } In Chancery
Decree

John C. Clinger

Aug. Term 1884,

~~Entered~~ page 399

J. S. K. Hyatt

Enter This

J. S. K.

Augt. 28/84

The depositions of R A Ayer and Patrick Hagan taken before me S H Munson a Commissioner in chancery for the Circuit Court of Scott County at Patrick Hagan's room in the town of Estelleville to be read as evidence as a cross examination in behalf of the defendant in a certain suit in chancery pending in the Circuit Court of Lee County between S H R Munson plaintiff and Jno C Olinger defendant. ~~These~~ depositions taken this 20th day November 1884 pursuant to leave granted the defendant to cross examine said Ayer & Hagan upon their evidence heretofore taken for the plaintiff.

R A Ayer a witness of lawful age being first duly sworn deposes to say

Question by Jno C Olinger

Did you not stand ready at the time I made the contract with plaintiff, to purchase my land at fifty cents per acre as agent

Answer for Trisalia Coal & Iron Co. I may have held out to you the idea that I could get authority to buy your land at 50 cents per acre if you would accept it and probably did try to get you to say you would accept fifty cents per acre for it, but I did not say I was authorized to make the purchase at that time nor for some time after. So soon as I was authorized to make the purchase I did so.

Question Will you please state the difference in horizontal & surface measurement as near as you can.

Answer Horizontal measurement is made treating the land as if it was a level plane, leveling the chain when crossing elevations and depressions. Surface measurement is made by chaining the surface both up & down elevations and depressions and is rarely accurate where the

Question

land is broken and mountainous. In purchasing such a tract of land as the tract I sold through you, please state what difference you would make under all the circumstances and embarrasments between a special warranty and general warranty.

Answer

I cannot say definitely how much difference I would make. I know that I spent several hundred dollars in perfecting the title you conveyed by special warranty. There were a number of adverse occupants upon the land who were waging a bitter & determined fight for the title in several suits pending. Some had been decided adversely to the claim of said Oliver.

And further this deponent saith not.

R. A. Myers.

Patrick Hagan another witness
of lawless eye being duly
sworn depose as follows to wit,
1. gives by deft no. 6. Oblique

you will please state whether
any written contract with your
name and seal attached was
tendered to Mr. Oblique

Ans. I suppose there was not
as I did not enter into any
written contract.

2. Was there a writing drawn up
for deft to sign

Ans. I do not know that
there was at least I presented
none.

3. State how much per acre
you were to pay

Ans. I proposed to pay fifty or
sixty cents per acre. I think it
was fifty cents. And I said
that I would so arrange it
at the then circuit court which
was being held at Jonesville
so that the sale of Oblique's
home farm would not be
confirmed. The time of payment
I do not distinctly remember

but I was to make it satisfactory to Abnigers creditors who were prosecuting suits against him

4 - Then you told me a general or special warrant, deed was. I think I said that I would want a deed with general warranty although I am not certain that the kind of deed was spoken of although I intended this kind of a deed.

15 - Then you told me all the land embraced in the survey or was your proposition to survey out all the land occupied by adverse claimants and required debt to litigate with them at his own expense, and I said I wanted the land surveyed and would pay for all not adversely held, and for that which was adversely held when the debt got possession from the occupant and placed me since further deponent said not Patrick Hagan

in possession of it,

Virginia Scott county to wit:

J. S. H. Morrison a commissioner

In chancery for the county aforesaid
do certify that the foregoing deposition
of R. A. Ayers & Patrick Hagan were
duly taken sworn to & subscribed before
me at the place and on the day
mentioned in the caption & pursuant to
notice.

Given under my hand this 20th day
of November 1884

J. A. Morrison Comr

Comrs fee \$2.00

J. A. Morrison Comr

John C. Allinger
atd receipt
R. L. Morrison

Filed Apr 21 1887
J. B. Hyatt Co

Comm fee \$2.00

Wood Marsh & Co Peff
 vs. } In lch.
 John B. Olinger and Deft

The deposition of John A. G. Hyatt taken in this case at the time of taking an account therein by the undersigned commissioner and the said Hyatt being duly sworn says.

I am well acquainted with the lands and real estate owned by the deft John B. Olinger, and my opinion is that said land is reasonably worth per year about \$250.00 in rent, or in other words said land ought to yield in annual rent about said sum of \$250.

Mr Olinger as I am informed has been dividing out his real estate among his children, or buying out certain parts which he designed some of his children to have. But the above estimate is on the whole land ^{as it was} before such division or allotment was made. And further this witness says not.

J. A. G. Hyatt

The foregoing deposition was subscribed & sworn to before me the 16th day of July 1885

Henry J. Morgan Comr.

Wood Marsh Co

27 3 Dico - Hyatts

Geo L. Olinger

(A32)

The deposition of Patrick Hagan taken
at his residence in Scott County
Virginia on this the 12th of July 1884
to be read as evidence on behalf
of Henry S. K. Morrison in a certain
suit in chancery now pending in
the Circuit Court of Lee
County in said State wherein the
said H. S. K. Morrison is plaintiff
and Job Obinger is defendant.

Patrick Hagan a witness of
lawful age being duly sworn
deposes and states - as follows.

I remember about March 1881
H. S. K. Morrison stated to me ~~to me~~
at Jonesville Va. that he was made
an agent by Job Obinger to sell
certain ^{the said} lands which were then
claimed by Obinger situated in Wise
County Va. The quantity estimated
to be claimed by Obinger was about
6000 acres. - Mr. Morrison spoke at
the same time of the present condition
of Mr. Obinger - that his Home Farm
had been sold for debt due from
him and that the sale would be
confirmed at that term of the Circuit
Court of Lee which was then

being held unless there was an
upset bid put in to get aside the
Sole or some arrangement made with
his creditors. Mr Morison also stated
that he had been negotiating a Sole
of the same Mountain land with
some man at Bristol, Mr James M
Barker, I think, that he could
get or had been offered fifty cents
an acre for the land - that he
would let me have it at the same
price, and that if I declined to take
it he would ^{send} a messenger forthwith
to Bristol and close the trade with
Barker - I agreed to take the land
at either fifty or sixty cents an acre
but my best impression is, that it was
fifty cents - but I would only take
and pay for so much as Olinger had
a title to, and the parts which were
~~in~~ the adverse possession of others
I would not agree to pay for until
they should be lawfully dispossessed.
And in surveying the land to
ascertain how much I should
pay for under my proposition, I insisted
on horizontal measurement. Mr
Morison agreed as I have remembered

to accept my terms, but before
I bound myself I wished to know
whether it would be agreeable to
Oliver. - Mr. Oliver had been
communicated with on the subject
he came to the office of Mayan
& Prichard and I told him what
had occurred between Mr. Merison
and myself in regard to his Mountain
Lane and wished to know if it
were satisfactory to him. This
conversation was after night, and
Mr. Oliver said he would consider
the matter until next morning and
then let me know. On the
next morning he informed me that
he would not accept my terms.

The two principal objections which I
think he made were as to the horizontal
measurement, and not agreeing to bind
myself for the party adversely affected
until possession was gained from them.

When Oliver declined my terms I
communicated the fact to Mr. Merison
and the matter then ended - and
further this deponent saith not

Patrick Mayan

Virginia Scott County to wit:
I John A. Moore a Justice of the Peace
of the said County of Scott. Do Certify
that the foregoing Deposition of Patrick
Legan was duly taken sworn to and
subscribed at the time and place in
the Caption mentioned and pursuant
to a notice herewith filed. Given
under my hand this 12th day of
July 1884.

Justice fee \$2.00
The further taking Deposition under said
notice is continued until the 14th day
of July 1884 at H. S. K. Morrisons Office
Estillville Scott Co. Va.

John A. Moore J. P.

Met pursuant to the foregoing adjournment
and upon motion of the Plaintiff the taking
of these depositions are postponed until
Saturday the 19th day of July 1884 at
this place ^{Estillville Scott Co. Va.} this the 14th day of July 1884.
John A. Moore J. P.

Met pursuant to the above postponement in
Estillville Scott County Virginia and on motion
of H. S. K. Morris the taking of said depositions
postponed until the 26th day of July 1884 at Estillville
Scott County Virginia in the office of H. S. K. Morrison.
this 19th day of July 1884. John A. Moore J. P.

Met pursuant to adjournment
at the office of HSK Monson in
the town of Estillville on the 26th
day of July 1884 present the justice
Jno A Moore & witness R A Ayers

R A Ayers a witness of lawful
age being first duly sworn deposes
and says

In the Spring of 1884 as I
now recollect and at the March
term of the Circuit Court of Lee
County for that year Mr John C
Olinger's home farm had been
sold previously for certain debts
reported against him in the
Chancery Causes of Wood Marsh
&c & others against him and the
report of sale came on at that
Court for Confirmation. Mr.
Olinger was very anxious to
defeat the Confirmation of
the sale and have the same set
aside and had several con-
versations with me on the subject.
He afterwards and at the same
term as he told me, employed
HSK Monson an attorney prac-
ticing in that Court to set aside
the said sale and agreed to

give said Monson in consideration for his services the exclusive right to sell a tract of 6000 acres of Mountain land that he owned in Wise County for 60 days and agreed to give him ten per cent as I now recollect for selling the same limiting the price he should sell at 50 cents per acre. In pursuance of this agreement Mr Monson appeared for Olinger in said Cause and procured the Court to set aside the sale upon an upset bid or otherwise all of which however appears from the records of the Chancery Causes of Wood Marsh to pertain against him.

Previous to any of these transactions I had been negotiating with Mr Olinger for the purchase of this same tract of land for some Northern Capitalists but had failed to consummate the purchase because the price offered was not ac-

captured by the said Olinger.

Olinger had also frequently offered and agreed to pay me a commission if I would find him a purchaser upon terms he was willing to accept. Soon after this court and within 60 days the parties for whom I had been negotiating, agreed to give the price asked by Mr Olinger viz: One dollar per acre and I concluded the purchase for them at that price. At the time I made the purchase I told Mr Olinger that he had agreed to give me a commission but that he had a contract with Mr Morrison and I would not exact it but that he must settle with Mr Morrison his commission under his contract with him. Mr Olinger said he could do this and further said he did not suppose he would charge him much or that he could have

much to pay. I told him I did not know how that would be but that I made the purchase with the express understanding that he was to settle with Minson whatever he was entitled to under his contract. Under the contract Mr Olmeyer has received or there has been paid for his benefit in said Chancery causes the sum of six thousand dollars.

And further this deponent saith:
Not

R. Dyer.

Virginia:

Scott County Court.

I John A. Morse a Justice of the peace in and for the County & State aforesaid do certify that the foregoing depositions of Patrick Hagan and R. Dyer were duly taken subscribed and sworn to before me at the times places and for the purposes in the caption and adjournments set forth. Given under my hand this 26th day of July 1884

John A. Morse

J.P.

Justices fees
brought down
\$ 2.00

Justices.
Fees \$ 1.00

H. S. R. Morrison

vs Depo.

J. Hagan et al

John C. Olinger

Rec'd by mail in
good condition and
filed July 29th 1884.

J. A. Hyatt
clerk.

J. P.
8

2.00
- 60
3.50

The within depositions are excepted to
because: The defendant having had notice
that depositions would be taken by the complain-
ant on the 11th & 12th of July 1884, at the house
of Patrick Hagan was present at the said Ha-
gan's at an early hour of the first
day above mentioned and remained
there till about 4 o'clock on the succeeding
day up to which time the complainant
had not arrived and the within deposition
had not been taken, the defendant despair-
ing of the complainant's coming at
all on that day and thinking it un-
reasonable and unjust that he should
be longer detained from his family &
business went home, but notwithstanding
the within deposition was taken after
the afore-said late & unreasonable
hour for which reason the defendant
objects to the same being read in evidence.
If the court be of the opinion that this the
deposition of Patrick Hagan should be suppress-
ed - then the defendant is advised that ^{that} of
R. & Ayer's should be suppressed also for
want of notice

J. B. Fulkerson p.d.

The facts stated in these exceptions are
sworn to before me by John C. Olinger
as being true. Aug 27 1884.
J. A. Hyatt

Henry S. K. Morrison

AGAINST

J. B. Olinger,
To Mr J B Olinger

Take notice that on the 11th 12 days
of July, 1884, at Patrick Hagan's House, in Scott
County, State of va I will proceed to take the deposition of Patrick
Hagan and others
to be read as evidence on behalf of H. S. K. Morrison
in a certain suit In Chy now pending in the Circuit Court of Lee
County, State of Virginia, wherein H. S. K. Morrison is
Plaintiff and J. B. Olinger, Defendant. And if from any
cause the taking of said depositions are not begun on that day, or being begun not completed, the same will be
continued from day to day, or from time to time, and, if desired, from place to place, until the same are complete. You
may attend and cross-examine if you wish.

June 26th, 1884.

Very Respectfully,

H. S. K. Morrison
By Atty.

W. S. K. Morrison

for
Sheriff.

vs
3
Notice

J. L. Olinger

To 11+12, July 1884

Executed by
delivering to
John L. Olinger
a true copy of
this notice,

July 5th 1884

R. D. Flanagan
S. L. C.

Woodstock & Co's

25

John C. Clinger &

} Dec. 1881

Whereas at the sale of
the Home farm ^{of John C. Clinger & Co} at the term of the
court seat of Lee County Virginia for
the year 1881 said land sold for \$2853⁰⁰
to W. Sump of said county and at the
same time there was sold of said
defts land 400 acres lying in the Crab
orchard in said county for \$300.⁰⁰ to
C. L. Hamblin of said county and Whereas
W. S. Clinger proposes to give ^{at least} ~~give~~
~~the~~ three hundred dollars advance
on the Home farm if a resale
be ordered upon said resale and
an advance of fifty dollars ^{at least} on
the four hundred acre tract if
a resale be ordered & tenders
his hand with good security ~~therefor~~
if a resale be ordered he therefore
prays the bidding be opened
and resale be directed to start
said lands at the advance indicated
above as in duty &c

An agreement made & entered into this 31st day of
March 1881 between John C. Clinger of Lee county
Va & H. S. W. Morrison of Scott county ^(said Clinger) Writely
that I have hired the said Morrison to negotiate for me
a sale of my interest by inheritance in the lands of
my father Jas. C. Clinger deceased & also the
interest which I bought of my sister Ann Eliza Kelly
which is estimated to be 6000 acres, it being two sevenths
of the 21000 acre survey descended from my father.

Clinger deceased situated in Wise county
Virginia & assigned to me & my sister Ann E. Kelly by the
commissioners Lewis Bailey, John Kelley & Joseph Kel
which is described in a bond & was drawn therefor
- drawn who made partition of the same upon the following
terms, to wit, at a price not less than fifty cents per acre
which sale is to be as for perfected as to all and
the sale heretofore made of my home lands to be
C. L. Houbler &
Slump & apply the purchase price of said lands which
said Morrison is hereby authorized to sell to the payment
of the judgments reported against me in the
chancery suit of Rod. March 4th v. John C. Clinger in
the order of their priority so far as it will go.
Now if said Morrison affects said sale for me of
said lands in 60 days from this date I agree to
pay him ten per centum upon the gross amount of
said sales, & hereby give him a lien on any lands

I own or have an interest in either in
Lee or Wise Counties Va for his said
commission & I hereby waive the benefit
of my homestead exemption as to this debt
Witness my hand & seal this 31st March
1881

Teste.

J. C. Olinger

A. Talley

^{his}
James R. Cunningham

^{mark}
Virginia Lee County to wit:

I John R. Gibson Clerk of the county court of Lee
County in the State aforesaid, do certify that the
foregoing contract between John C. Olinger
of Lee County Va. of the one part, and H. S. R. Morris
of Scott County Va. of the other part was
this day filed in my office and the signature
of John C. Olinger assigned thereto was proved
by the oaths of J. L. Bridgmore and C. L.
Hamblen and the same is admitted to
record, given under my hand this the 14th
day of April 1883.

John R. Gibson Clerk
of Lee County Court Va.

H. S. K. Morrison.
From 3 Contract

J. C. Olinger

Recorded In
Deed Book No 27.

Page 213.

J. B. Gibson clkr.

Exhibit "A"

The Commonwealth of Virginia,

To the Sheriff of Lee County---Greeting:

WE COMMAND YOU, That, of the goods and chattels of

J. C. Olinger

Late in your bailiwick, you cause to be made \$ *449.92*, with legal interest thereon, from the *7th* day of *July* 18 *77*, till payment, which *Wood Marsh & Co.*

Lately in our *circuit* Court for Lee County have recovered against *him* by suit for *Debt* also \$ *7.48* which to the said *Wood Marsh & Co.*

In our said Court were adjudged for *their* costs in that behalf expended, whereof the said *Olinger is*

Convicted, as appears to us of record. And that you have the same before the Judge of our said Court, at the Court-House on the first Monday in *February* next to render to the said *Wood Marsh & Co.* of the *Debt*, and costs aforesaid.

And have then there this writ. Witness, JAMES W. ORR, Clerk of our said Court, at the Court house, this *11th*

day of

Decr

18 *77*, in the 10 *2^d* year of the Commonwealth.

James W. Orr CLERK.

A copy

Teste R. W. Orr & Co

64.48
22.50
31.50
7.48

(3)

200

Wood Marsh & Co.

3 Si La

J. C. Olinger

Feb Rules 1878.

No property found

Jas. C. Scott & S. for

Thos. S. Oly & L. C.

A copy

Inte. R. W. Ory. D.C.

"A"

Received of J. C. Colver
\$34.00 thirty four
dollars to go as a credit
on a judgment & to be ac-
knowledged in my hands in favor
of Morrison & Dymally
December 27 - 1884

W. M. Redson C. J. C.

P. M. Pearson
Rept

"E"

February the 17th 1885

Received of J. C. Olinger
Twenty Dollars \$20.00 to
be credited and executed
in my hands in favor
of Harrison & Drunk
February 17 1885-

J. D. Reason C. J. C.

“ ”
3

Morrison v. Olinger

It is unnecessary to decide whether Judge Morrison had negotiated a sale with Mr. Hagan or not. Mr. Olinger interfered before the 60 days expired, within which Judge M. had the exclusive right to sell, and without consultation with him, sold the land. This put it out of Judge M's power to sell, and was a violation of his Mr. Olinger's contract with Judge M. Now the purchasers through Mr. Ayres had notice of Judge M's right in the premises; and it was both prudent and equitable in them to secure that right. It was prudent, because they would have been involved in a controversy with Judge Morrison if they had not secured his rights. It was equitable, as Judge Morrison had the exclusive right to sell for these 60 days, and the purchasers ought to have negotiated their purchase with him, instead of contracting directly with Olinger. But they chose to contract with Olinger and stipulated with him that he, Olinger should pay Morrison his proper commissions. The contract between Olinger & Ayres agent, to pay Judge M. his commissions had a valuable consideration to support it, and was amply sustained by the equities between the parties.

The commissions to which Judge Morrison was entitled does not seem to the Court to be 10 per. cent. on the \$6000.⁰⁰. He is rather entitled to the loss ~~which~~ he sustained by Olinger's breach of contract. The sales which he was attempting to negotiate were sales at 50^{cts} per acre. If he had succeeded 10 per cent. on \$3000.⁰⁰ would have been his compensation. It was a sale at this price that was prevented. It seems therefore that \$300 is the compensation to which he is entitled. So it will be decreed

Jn. A. Keely.
Mar 30 1885

Opinion
in
Morrison & Olinger

Mar. 30 '88

THE COMMONWEALTH OF VIRGINIA.

To The Sheriff Of Lee County Greeting :

We Command You to Summon

John C. Olinger

To appear at the Clerk's Office of the Circuit Court of Lee County, at the Courthouse on the first Monday in

May

next being rule day to answer a bill in chancery exhibited in our said Court against

him

by

J. F. S. K. Harrison

And have then there this writ. Witness J. A. G. HYATT Clerk of our said Court at the Courthouse

This *25th* day of *April* 188 *3*, in the 10 *7* year of the Commonwealth.

J. A. G. Hyatt Clerk

CP

H. S. K. Harrison

vs ³ Spa in Chcy

John C. Olinger

Lo May Rules 1883.

Not Enclosed for the
want of time
8 miles S 8

THE COMMONWEALTH OF VIRGINIA.

To The Sheriff Of Lee County Greeting :

as at an other time we have done

We Command You to Summon

John. L. Olinger

To appear at the Clerk's Office of the Circuit Court of Lee County, at the Courthouse on the first Monday in

*I sue
him*

next being rule day to answer a bill in Chancery exhibited in our said Court against

by

W. S. K. Harrison

And have then there this writ. Witness J. A. G. HYATT Clerk of our said Court at the Courthouse

This

7th day of *May*

1883, in the 10th year of the Commonwealth.

J. A. G. Hyatt Clerk

(P)

H. S. K. Morrison
vs. Miss Spa in
Chancery

J. C. Olinger

To June Rules 1883.

Executed by delin-
ering copies of
the matter to each
of the parties
to the cause.